

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR AND EMPLOYMENT LAW**

FIELD OPERATIONS MANUAL

CHAPTER FOUR PREVENTION OF EMPLOYMENT

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

Last Revised January 2000

4.00, Preventing Employment By Others of Former Employee

A. Coverage

The Prevention of Employment statute is set forth in § 40.1-27 of the Code of Virginia. The statute applies to all private industry employers doing business in the Commonwealth.

B. Summary

This Virginia law prohibits an employer or any of its agents from willfully and maliciously preventing or attempting to prevent by word or writing, directly or indirectly, either a discharged employee or an employee who left employment voluntarily from obtaining employment with another person. The statutory restriction does not prevent a person from giving a truthful statement of the reason for the discharge, or a truthful statement concerning the character, industry and ability of a person who has left voluntarily. Violation of this law is a criminal offense.

C. Case Assignment

1. Regional, Field, or Central Office staff person receives complaint.
2. The claimant should be requested to write a letter documenting all information relevant to the alleged violation such as prospective employers giving the false information, former employer's agent who gave the false information, dates the information was given, etc.

D. Investigation

1. Interviews complainant.
2. Interviews prospective employers.
3. Interviews former employer.
4. Reviews personnel file and attendance record of the complainant employee.
5. Reviews employer's policy for handling inquiries regarding former employees.
6. Upon review of all facts, findings, testimonies, etc., representative determines the validity of claim.

E. Informal Resolution

Representative will attempt informal resolution:

1. Discuss findings and determination with employer.
2. Inform employer:
 - (1) False statements must be retrieved and rectified immediately.
 - (2) A check will be made in a reasonable amount of time with prospective employers to determine if statements have been retracted.
 - (3) Criminal action may be taken if informal compliance is not obtained.
3. Future Compliance

In order to assure future compliance, advise employer to be extremely cautious about characterizing the quality of work performed by a former employee. As a precaution against unwitting violations of the law, employers may want to establish a central point of contact with the company to handle inquiries regarding former employees to ensure that information given out to other prospective employers of the former employee is accurate. Employers should avoid situations where they may be exposed to an allegation that information provided by them has prevented employment of former employees. As a general rule, employers should merely confirm the employee's dates of employment and job title, without characterizing the employee's service.

F. Employer Refuses to Comply

1. Discuss the case with the Supervisor. Request permission to take criminal action.
2. If Supervisor's approval is received, prepare the case file and request the assistance of the Commonwealth Attorney in prosecuting the case.